IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12319 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE STATE OF GUJARAT AND OTHERS
Versus
VALLABHAI JIVABHAI KATHIRIYA

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Appearance :
MR KETAN J DWIVEDI, ASSISTANT GOVERNMENT PLEADER for the Petitioners

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 08/05/2007

ORAL JUDGMENT

1. The State of Gujarat, through Director of Agriculture is before this Court. The other petitioners are, Joint Director of Agriculture and Assistant Director of Agriculture.

This is yet another case of sheer negligence on the part of the Government officers.

2. In this petition, order dated 30.11.2006, passed by the learned Additional District Judge and Presiding Officer, 4th Fast Track Court, Junagadh, below application Exh.34 in Regular Civil Appeal No.76 of 1997 arising from Regular Civil Suit No.937 of 1996, is challenged.

Regular Civil Suit No.937 of 1996 was filed in the year 1996 seeking declaration that the department has committed an error in treating the plaintiff – respondent herein on unauthorized leave. The suit was proceeded and was decided by judgment and order dated 01.05.1997 by the learned Joint Civil Judge (S.D.), Junagadh.

2. It is recorded on umpteen number of times by the learned Joint Civil Judge that, 'the learned advocate appearing for the defendants in that suit did not produce any documentary or oral evidence'. To start with, in paragraph No. (7), the learned Judge has recorded that:

(emphasis supplied)

> “An important notable fact of this case is that by Exh.67, the plaintiff and by Exh.69, the defendants have filed a pursis that no oral evidence is to be produced.”
>
> (emphasis supplied)

The mater proceeded only on the basis of the documentary evidence lead by the plaintiff as the defendants did not produce any documentary evidence also.

In paragraph No.(12), the learned Judge has recorded that:

> "In Exhs.50, 51 and 56 and in written statement at Exh.9, there is nothing to indicate, no written consent was obtained from the plaintiff for treating the absence of the plaintiff as unauthorized absence and for not giving him benefits of the services along with the arrears of salary."

The learned Judge has recorded with pains that, 'no responsible officer is examined nor any documentary evidence is produced on record'. In absence of any written documents, the suit was allowed. Against that, as usual, at it is not going to cost anything to any individual officer and to shirk the ultimate liability, the department preferred Regular Civil Appeal No.76 of 1997. In the said appeal, it is only on **17.03.2006** that an application Exh.34 was filed after about NINE YEARS.

For long 9 years, the Government, which though has assistance of any competent Law Officer/s, did not file any application seeking permission to produce documentary evidence. It was only in the year 2006 that application – Exh.34 was filed, which is rejected by the learned Additional District Judge and Presiding Officer, 4th Fast Track Court, Junagadh by order dated 30.11.2006.

3. The learned Additional District Judge has relied upon a decision of this Court in the matter of **PATEL NANJI BHOVAN DUDHATRA VS. PATEL NARAN MITHA SUKHADIYA AND ANOTHER**, reported in 1998 (1) GLR 788. Relying upon that

decision, the learned Judge has recorded the convincing reasons for rejecting application Exh.34.

4. Mr.Dwivedi, learned Assistant Government Pleader for the petitioner – State, without appreciating the scope of the present petition, argued the matter. He submitted that, 'though the documents were sent to the learned Assistant Government Pleader appearing for the Government authorities in the suit, he did not produce those documents before the Court'. Assuming that it is so, though no affidavit to substantiate this say is filed. it is a matter between the Government and the learned Assistant Government Pleader. It does not affect the legality and validity of the order under challenge.

(emphasis supplied)

Learned Assistant Government Pleader Mr.Dwivedi invited attention of the Court to paragraph No.7 of the judgment and order of the learned Joint Civil Judge, which is referred to hereinabove. He reiterated that, “Sir, 'though the documents were given to the learned Assistant Government Pleader, he did not produce the same before the learned Judge'. He also invited attention of the Court to paragraph No.12 of the judgment and order and again submitted that, “Sir, 'though the documents were supplied to the learned Assistant Government Pleader, he did not produce the same before the learned Judge'. By any standard, this is not the sufficient ground to allow an application seeking production of documentary evidence

at an appellate stage. The Government cannot be allowed to produce the documents in an appeal, which are not produced before the learned trial Judge.

5. Learned Assistant Government Pleader Mr.Dwivedi is not able to point out as to why order dated 30.11.2006 is challenged belatedly in this petition, which is filed on 07.05.2007.

The indifferent approach of the Government officers in the matter in which substantial financial liability is arising, which is an avoidable burden on the public exchequer, is required to be deprecated and it is accordingly deprecated.

6. The petition having been found without any substance, it is dismissed with cost of Rs.15,000/- (Rupees Fifteen Thousand Only), which shall be recovered, if deemed fit by the Government, from the earing officer and the earing Assistant Government Pleader.

(RAVI R.TRIPATHI, J.)

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